IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

RSA.No. 447 of 2007()

AS.235/2004 of VI ADDL.DISTRICT COURT, ERNAKULAM
OS.884/2001 of PRL.M.C.,ERNAKULAM
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APPELLANTS/APPELLANTS/DEFENDANTS 1 AND 4
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1. M/S SUSUKI AUTOMOBILES, 34/1764,
NATIONAL HIGHWAY, OPP. TO CHANGAMPUZHA PARK,
EDAPPALLY, KOCHI-682024.

2. ABEL D'COUTH, AGED 63 YEARS,
S/O SERIELY D'COUTH, PARTNER OF M/S SUSUKI
AUTOMOBILES, EDAPPALLY, RESIDING AT KANDENGHATTU
HOUSE, JANATHA ROAD, PALARIVATOM, KOCHI-682025,
PALARIVATTOM DESOM, POONITHURA VILLAGE,
KANAYANNUR TALUK.

BY ADV. SRI.MATHEW SKARIA
SRI.JOSE THOMAS (PEEDIKAYIL)

RESPONDENTS/ RESPONDENTS/PLAINTIFF AND DEFENDANTS 2,3 AND 5
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1. STATE BANK OF TRAVANCORE, REPRESENTED BY
ITS BRANCH MANAGER, KALOOR BRANCH, ERNAKULAM.

2. ASHIL D'COUTH, AGED 37 YEARS,
S/O ABEL D'COUTH, PARTNER OF M/S SUSUKI
AUTOMOBILES, EDAPPALLY, RESIDING AT KANDENGHATTU
HOUSE, JANATHA ROAD, PALARIVATTOM, KOCHI-682025,
PALARIVATTOM DESOM, POONITHUR VILLAGE,
KANAYANNUR TALUK.

3. ADRIL D'COUTH, AGED 32 YEARS,
S/O ABEL D'COUTH, PARTNER OF M/S SUSUKI
AUTOMOBILES, -DO- -DO-.

4. GILROY ROZARIO, LECTURER IN COMMERCE,
ST. ALBERTS COLLEGE, BANERJI ROAD, ERNAKULAM AND
RESIDING AT NAMBIAPARAMBIL HOUSE, KOMBARA,
ERNAKULAM, COCHIN-682018.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.957/07 IN RSA 447/07

DISMISSED

13/7/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PS to Judge.

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO.447 OF 2007

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Dated this the 13th day of July,2007

JUDGMENT

Appellants are defendants 1 and 4 in O.S.884/2001 on the file of Munsiff Court, Ernakulam. First respondent instituted the suit seeking realisation of Rs.93950/- with interest at 20.40% from the date of the suit being the amount due under Ext.A1 promissory note and Ext.A3 guarantee agreement. The case of the respondent is that first defendant executed Ext.A1 promissory note in favour of defendants 2 to 4 who endorsed it in favour of plaintiff bank and delivered it under Ext.A2 and also executed Ext.A3 guarantee agreement and first appellant/first defendant availed the overdraft facility and defendants 2 to 4 are the sureties and all of them are jointly and severally liable. According to first respondent, defendants failed to pay the balance amount due inspite of Ext.A5 notice and therefore first

respondent is entitled to a decree realising the amount from all the defendants. Defendants 2 to 4 in their joint written statement denied the case of the execution of Exts.A1 to A4 and contended first defendant was having overdraft facility with Canara Bank and plaintiff bank invited him offering enhanced credit facility and allowed him to operate an account pending the application for credit facility and in December 1997 he was informed that his application was rejected. It was also contended that Ext.A1 to A4 were not acted upon, and defendants are not liable to pay the amount and first defendant had transaction with the Bank in 1997 and so the claim is barred by time and first respondent is not entitled to the decree sought for.

2.Learned Munsiff on the evidence of PW1 and DW1 and Exts.B1 to B7 upheld the case of the first respondent and granted a decree in favour of four respondent bank directing defendants to pay Rs.93,950/- jointly and severally against the

defendants. Only defendants 1 and 2 challenged the decree and judgment before District Court, Ernakulam in A.S.235/2004. Learned District Judge on reappreciation of evidence confirmed the findings of learned Munsiff. But future interest was reduced to 9% from the date of the suit. The decree was confirmed in all other respects. It is being challenged in the second appeal.

3. Learned counsel appearing for appellants was heard.

4. The argument of learned counsel appearing for appellants was that there is no evidence to prove that Exts.A1 to A4 were acted upon and on the evidence courts below should have found that first defendant had withdrawn the amount in 1997 and therefore the suit is barred by limitation and therefore the decree and judgment are to be set aside.

5. On hearing learned counsel appearing for appellants, I find no substantial question of law involved in the appeal.

6. The suit is based on Ext.A1 promissory note executed by first defendant in favour of defendants 2 to 4 and endorsed by them in favour of first respondent bank evidenced by Ext.A2 delivery note and Ext.A3 guarantee agreement executed by defendants 2 to 4 and Ext.A4 guarantee agreement executed by fifth defendant for the additional amount sanctioned. Though defendants contended that Exts.A1 to A4 were not acted upon, the trial court and the first appellate court on appreciating the evidence found that the contention is not correct and first defendant had availed the credit facility with defendants 2 to 4 as guarantors and the balance amount as claimed by first respondent is due. That factual finding cannot be interfered by reappreciating the evidence, in exercise of the powers of this court under section 100 of Code of Civil Procedure. Evidence establish that Ext.A1 to A4 were executed by defendants and the amount found by the courts below are due from defendants and all of them are jointly and severally liable.

Though future interest at 20.40% was granted by trial court, first appellate court reduced the future interest to 9% per annum. In such circumstance, no substantial question of law is involved in the appeal. The appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006